



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
(Implements RCW 34.05.360)

**Agency:** Department of Social and Health Services, Aging and Disability Services Administration

☐ Permanent Rule  
☒ Emergency Rule

**Effective date of rule:**

**Permanent Rules**

☐ 31 days after filing.  
☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

☒ Immediately upon filing.  
☐ Later:

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain:

**Purpose:** Amending WAC 888-513-1350 to clarify the rules, increase the spousal resource maximum from \$41,000 to \$41,943 effective July 1, 2005, and increase the Community Spousal Share maximum to \$99,540 effective January 1, 2006.

DSHS is clarifying that an individual retirement account (IRA) belonging to a community spouse is a countable resource when determining eligibility for long-term care (LTC) services. (Social Security Act section 1924 supersedes Social Security Income (SSI)-related rules.)

Also, DSHS is amending this rule due to Federal law change in the 2005 Deficit Reduction Act of 2005 (Public Law 109-171) regarding disqualification for long-term care assistance for individuals with home equity in excess of \$500,000 effective May 1, 2006.

**Citation of existing rules affected by this order:**

Repealed: None 3  
Amended: WAC 888-513-1350  
Suspended: None

**Statutory authority for adoption:** RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575

**Other authority :** 2005 Federal Deficit Reduction Act (DRA) Public Law 109-171; and Section 1924 of the Social Security Act {42 U.S.C. 1396r-5}

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date)

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: Name: Address: phone ( ) fax ( ) e-mail

**ADOPTION**

**PERMANENT**

**EMERGENCY**

**EFFECTIVE DATE: 8/24/06**

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Congress recently adopted new standards for client available resources in P.L. 109-171 § 6104, which the state must adopt to remain eligible for federal Medicaid funding. This filing will continue the January 1, 2006 federal increase in the community spouse resource share included in WSR 06-02-043 and 06-10-033 while the department completes adoption of permanent rules initiated under WSR 06-10-019. DSHS is planning on filing a CR 102 on this WAC by October. DSHS is in the process of receiving final direction from the federal Centers for Medicare and Medicaid Services (CMS) on DRA issues.

**Date adopted:**

8/23/06

**NAME (TYPE OR PRINT)**

Andy Fernando

**SIGNATURE**

*Andy Fernando*

**TITLE**

Manager, Rules and Policies Assistance Unit

**CODE REVISER USE ONLY**

CERTIFICATION OFFICE  
STATE OF WASHINGTON  
FILED

AUG 24 2006

142

06-18-012

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	<u>1</u>	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted in the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

AMENDATORY SECTION (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

**WAC 388-513-1350 Defining the maximum amount of resources allowed and determining resources availability for long-term care (LTC) services.** This section describes how the department defines the resource standard and available resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (5) through (8); or

(b) Three thousand dollars for a legally married couple, unless subsection (2) applies.

(2) If the department has already established eligibility for one spouse, then it applies the standard described in subsection (1)(a) to each spouse, unless doing so would make one of the spouses ineligible.

(3) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility and limits;

(b) WAC 388-475-0250, How to determine who owns a resource;

(c) WAC 388-470-0060(6), Resources of an alien's sponsor; and

(d) WAC 388-506-0620, SSI-related medical clients.

(4) For LTC services the department determines a client's nonexcluded resources as follows:

(a) ~~((For an SSI-related client, the department reduces available resources by excluding resources described in WAC 388-475-0350 through 388-475-0550))~~ The department determines available resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 with the exception of WAC 388-475-0550(16) and WAC 388-475-0350(b). Clients applying for LTC services on or after May 1, 2006, and have an equity interest greater than five hundred thousand dollars in their primary residence, are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence;

(b) For an SSI-related client who has a community spouse, the department:

(i) Excludes resources described in WAC 388-513-1360; and

(ii) Adds together the available resources of both spouses according to subsection (5)(a) or (b) as appropriate;

(c) For a client not described in subsection (4)(a) or (b), the department applies the resource rules of the program used to relate the client to medical eligibility.

(5) The department determines available resources of a legally married client, when both spouses are institutionalized, by following WAC 388-506-0620 (5) and (6). For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of nonexcluded resources held in the name of:

- (i) The institutionalized spouse; or
- (ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

- (i) Either spouse; or
- (ii) Both spouses.

(6) If subsection (5)(b) applies, the department determines the amount of resources that are allocated to the community spouse before determining nonexcluded resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ((ninety-five)) ninety-nine thousand ((one)) five hundred forty dollars effective January 1, ((2005)) 2006; or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined nonexcluded resources as of the beginning of the current period of institutional status, up to the amount described in subsection (6)(a); or

(ii) The state spousal resource standard of ((forty thousand)) forty-one thousand, nine-hundred forty-three dollars effective July 1, 2005.

(7) The amount of the spousal share described in (6)(b)(i) is determined sometime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client will be required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(8) The amount of allocated resources described in subsection (6) can be increased, only if:

(a) A court transfers additional resources to the community

spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC or by consent order, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(9) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (10)(a), (b), or (c) applies.

(10) A redetermination of the couple's resources as described in subsections (4)(b) or (c) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's nonexcluded resources exceed the standard described in subsection (1)(a), if subsection (5)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (6) or (8) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.